

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

JASON RANDOLPH,

Plaintiff,

vs.

No. 2:06-cv-00058

No. 2:06-cv-00050

RONNIE DALE SCHUBERT;
GARY GREEN;
CHIEF OF POLICE DAVID E. BEATY; and
THE CITY OF CROSSVILLE, TENNESSEE,

Defendants.

**PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES,
COSTS AND EXPENSES AGAINST DEFENDANTS SCHUBERT,
GREEN, BEATY AND THE CITY OF CROSSVILLE**

COMES NOW the Plaintiff, by and through counsel of records and pursuant to F.R.C.P. 54, 42 U.S.C. Section 1988 and the Judgment entered against the Defendants on November 9, 2006, and respectfully moves the Court for an award of reasonable attorney fees, costs and expenses incurred in this action and in support thereof the Plaintiff relies upon the Memorandum in Support of Plaintiff's Motion for an Award of Attorneys' Fees, Costs and Expenses against Defendants Schubert, Green, Beaty and the City of Crossville, the Affidavit of Andrew C. Clarke, the Affidavit of Stephen A. Burroughs, the verified Bill of Costs of Stephen Burroughs, the verified Bill of Costs of Andrew C. Clarke, the Affidavit of Cynthia Wilson, the Affidavit of Andy Allman and the Affidavit of William Leader, and the entire record as a whole and would respectfully state as follows:

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1. The Plaintiff filed this action against the Defendants on June 2, 2006, alleging that the Defendants, jointly and severally, violated the Plaintiff's constitutional rights under the Fourth and Fourteenth Amendment and various state law rights. The Plaintiff's Complaint and Amended Complaint for civil rights violations were brought pursuant to 42 U.S.C. Section 1983 and 1988. The Defendants filed responses to the Complaint and Amended Complaint denying that the Defendants' actions violated the Plaintiff's constitutional or state law rights.

2. On October 30, 2006, the Defendants made an Offer of Judgment of \$90,001.00 plus reasonable attorneys fees and costs accrued through the date of the Offer of Judgment. This Offer of Judgment was received by Plaintiff's counsel on October 31, 2006. On November 8, 2006, the Plaintiff filed a Notice of Acceptance of Defendant's Rule 68 Offer of Judgment, Proof of Service of Defendants' Rule 68 Offer of Judgment and Plaintiff's Notice of Acceptance of Defendants' Rule 68 Offer of Judgment and Notice of Filing of Defendants' Rule 68 Offer of Judgment, Plaintiff's Notice of Acceptance of Defendants' Rule 68 Offer of Judgment and Request for Entry of Judgment. On November 9, 2006, this Honorable Court filed an Order entering a Judgment against the Defendants in the amount of \$90,001.00.

3. Plaintiff has been represented throughout this litigation by Stephen Burroughs of Burroughs & Johnson and Andrew C. Clarke of Borod & Kramer, P.C. Plaintiff's counsel, Andrew C. Clarke, has expended a total of 97.35 hours in representing Plaintiff in this litigation to judgment as reflected in the Affidavit of Andrew C. Clarke attached as Exhibit A. Mr. Clarke's normal hourly rate is \$350.00. (Affidavit of Andrew C. Clarke attached as Exhibit A). Plaintiff's counsel, Andrew C. Clarke, has incurred expenses in the prosecution of this case in the amount of \$849.63 which are set forth in the Affidavit of Andrew C. Clarke attached as Exhibit A and its exhibits which include

the client's expense sheet and a properly executed Bill of Costs. Further, Plaintiff's counsel, Stephen Burroughs has expended a total of 49.5 hours in representing Plaintiff in this litigation to judgment as reflected in the Affidavit of Stephen Burroughs attached as Exhibit B. Mr. Burroughs normal hourly rate is \$225.00. (Affidavit of Stephen A. Burroughs attached as Exhibit B). In addition, Plaintiff's counsel, Stephen Burroughs, has incurred expenses in the prosecution of this case in the amount of \$1,236.77 which are set forth in the Affidavit of Stephen Burroughs attached as Exhibit B and its exhibits which include the client's expense sheet and a properly executed Bill of Costs.

4. Based on the respective hourly rates of Plaintiff's counsel, the number of hours reasonably expended and the factors to be considered in awarding attorneys' fees set forth in Blanchard v. Bergeron, 489 U.S. 87, 93 (1989), Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-719 (5th Cir. 1974), Hamlin v. Charter Township of Flint, 165 F.3d 426, 436 (6th Cir. 1999), and other cases, Plaintiff requests an award of attorneys' fees for obtaining a Judgment against the Defendants which is calculated as follows:

a.	Andrew C. Clarke	-	\$350 X 97.35 hours	=	\$34,072.50
			(Lodestar Amount)		
		-	\$34,072.50 X 2	=	\$68,145.00
			(Lodestar Amount Enhanced by a Multiplier of Two)		
	Total Fees Claimed by Andrew C. Clarke			=	\$68,145.00
b.	Stephen Burroughs	-	\$225 X 49.5 hours	=	\$11,137.50
	Total Attorneys' Fee Claimed for Obtaining Judgment			=	\$79,282.50

* This amount does not include any time devoted to the preparation and argument of the instant Motion.

5. Further, Plaintiff requests an Order awarding him costs and expenses associated with the prosecution of the instant action and obtaining Judgment against the Defendants which are

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documented in the exhibits to the Affidavits of Andrew C. Clarke and Stephen A. Burroughs and are calculated as follows:

a.	Andrew C. Clarke	=	\$849.63
b.	Stephen A. Burroughs	=	\$1,236.77
	Total Expenses & Costs	=	\$2,086.40

6. In addition to the Affidavits of Plaintiff's counsel, the Plaintiff is submitting the Affidavits of Cynthia Wilson (attached as Exhibit C), Andy Allman (attached as Exhibit D) and William Leader (attached as Exhibit E) who are attorneys who practice complex litigation and civil rights litigation in the Middle District of Tennessee in support of their Motion for Attorneys' Fees, Costs and Expenses. Based on a review of the Affidavits of Ms. Wilson, Mr. Allman and Mr. Leader, the Plaintiff submits that the requested attorneys' fees, costs and expenses are reasonable, necessary and should be approved.

7. Finally, the Plaintiff also seeks to recover all reasonable attorney's fees, costs and expenses involved in the filing and argument of the instant Motion for Attorney's Fees, Costs and Expenses. The total amount of time devoted to the Motion for Attorney's Fees, Costs and Expenses by Mr. Clarke through November 14, 2006 is 21.05 hours. Therefore, the Plaintiff requests that this Honorable Court enter an Order awarding Plaintiff attorneys' fees in the amount of (\$350 X 21.05 hours) \$7,367.50 for the preparation of the instant Motion for Attorneys' Fees, Costs and Expenses, Memorandum in Support of Motion for Attorneys' Fee, Costs and Expenses and supporting documents. This does not include any time devoted to the argument of the instant motion. Further, while Mr. Burroughs has performed valuable services in association with the instant Motion, the Plaintiff is not requesting any attorneys' fees for his contributions. However, if it becomes necessary to argue the instant Motion, the Plaintiff will be requesting additional fees of both Mr.

Clarke and Mr. Burroughs associated with the argument of this Motion.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that his Motion for Attorneys' Fee, Costs and Expenses be granted and that this Honorable Court enter an Order awarding the Plaintiff: 1) the sum of \$79,282.50 as reasonable attorney fees for the services of Plaintiff's attorneys in obtaining Judgment against the Defendants; 2) the sum of \$2,086.40 as expenses and costs; 3) the sum of \$7,637.50 as reasonable attorneys' fees associated with the preparation of the instant Motion, Memorandum in Support and supporting documents; and 4) all such further relief, both general and specific, to which he may be entitled under the premises.

Respectfully Submitted,

BOROD & KRAMER, P.C.

s/ Andrew C. Clarke
Andrew C. Clarke (15409)
Attorney for Plaintiffs
80 Monroe Avenue, Suite G1
Memphis, Tennessee 38103
(901) 524-0200 (tel)
(901) 543-0043 (fax)

BURROUGHS & JOHNSON

s/ Stephen A. Burroughs
Stephen A. Burroughs (19994)
1750 Riverview Tower
900 South Gay Street
Knoxville, Tennessee 37902
(865) 525-3773

CERTIFICATE OF SERVICE

I, Andrew C. Clarke, do hereby certify that a true and correct copy of the foregoing has been served upon the following persons through the Court's electronic filing system:

Daniel H. Rader, III
P.O. Box 3347
Cookeville, Tennessee 38502

Robert H. Watson, Jr.
P.O. Box 131
Knoxville, Tennessee 37901-0131

Stephen A. Burroughs
1750 Riverview Tower
900 South Gay Street
Knoxville, Tennessee 37902

This the 21st day of November, 2006.

s/ Andrew C. Clarke
Andrew C. Clarke